

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:	:	CHAPTER 11
	:	
BAY CIRCLE PROPERTIES, LLC, <i>et al.</i> , ¹	:	CASE NO. 15-58440-wlh
	:	(Jointly Administered)
DEBTORS.	:	

GUY G. GEBHARDT,	:	
ACTING UNITED STATES TRUSTEE,	:	
	:	
MOVANT.	:	
	:	
-vs-	:	CONTESTED MATTER
	:	
BAY CIRCLE PROPERTIES, LLC, <i>et al.</i> ,	:	
	:	
RESPONDENTS.	:	

**MOTION TO DISMISS OR CONVERT
AND REQUEST FOR STATUS CONFERENCE**

COMES NOW Guy G. Gebhardt, Acting United States Trustee for Region 21, pursuant to 28 U.S.C. § 586(a)(3) and 11 U.S.C. § 1112(b), and respectfully moves this Court to dismiss or convert this case. In support of this motion, the United States Trustee shows the Court as follows:

1.

Debtors BAY CIRCLE PROPERTIES, LLC, *et al.*, (“Debtors”) filed a voluntary petition for relief under chapter eleven of the Bankruptcy Code on May 4, 2015.

2.

Cause exists for dismissal because Debtors have not filed any monthly operating reports covering any periods after March 2017.

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are Bay Circle Properties, LLC (1578), DCT Systems Group, LLC (6978), Sugarloaf Centre, LLC (2467), Nilhan Developers, LLC (6335), and NRCT, LLC (1649).

3.

An unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter is cause to dismiss or convert a case. 11 U.S.C. § 1112(b)(4)(F).

4.

The Bankruptcy Code directs the United States Trustee to ensure that all reports, schedules, and fees required to be filed by a debtor are properly and timely filed, monitor the progress of the case, and take the necessary action to prevent undue delay in such progress. 28 U.S.C. §§ 586 (a)(3)(D) and (G).

5.

The United States Trustee for Region 21 has established Operating Guidelines and Reporting Requirements for Debtors in Possession and Trustees (“the Guidelines”). Every chapter 11 debtor receives a copy of the Guidelines at the beginning of the case and thereby receives written notice of the obligation to file monthly operating reports in a timely manner. The Guidelines explicitly state that compliance is essential and that the debtor’s failure to comply may result in the United States Trustee filing a motion to dismiss the case.

6.

Debtors’ failure to timely file the required monthly operating reports is a violation of Federal Rule of Bankruptcy Procedure 2015 and a violation of 11 U.S.C. § 704(a)(8), made applicable to a chapter 11 debtor-in-possession by 11 U.S.C. §§ 1106(a)(1) and 1107(a).

7.

“Timely and accurate financial disclosure is the lifeblood of the Chapter 11 process.” *In re Tornheim*, 181 B.R. 161, 164 (Bankr. S.D.N.Y. 1995). Monthly operating reports are not mere busywork; they are the means by which the United States Trustee is able to make an independent assessment of a debtor’s current financial condition and its prospects for reorganization. *Id.*

8.

The United States Trustee should not be forced to implore a chapter 11 debtor to file monthly operating reports in a timely manner. *In re McClure*, 69 B.R. 282, 290 (Bankr. N.D. Ind. 1987).

WHEREFORE, the Acting United States Trustee respectfully requests that this Court dismiss or convert this case, and convene a status conference on Thursday, November 30, 2017 at 1:30 PM.

GUY G. GEBHARDT
ACTING UNITED STATES TRUSTEE
s/ Thomas W. Dworschak
Thomas W. Dworschak
Trial Attorney
Georgia Bar No. 236380

United States Department of Justice
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GUY G. GEBHARDT,	:	
ACTING UNITED STATES TRUSTEE,	:	
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MOVANT.	:	
	:	
-vs-	:	CONTESTED MATTER
	:	
BAY CIRCLE PROPERTIES, LLC, <i>et al.</i> ,	:	
	:	
RESPONDENTS.	:	

NOTICE OF HEARING

PLEASE TAKE NOTICE that the United States Trustee has filed a Motion to Dismiss or Convert.

PLEASE TAKE FURTHER NOTICE that the Court will hold a hearing on the United States Trustee's Motion in **Courtroom 1403**, United States Courthouse, 75 Ted Turner Drive, S.W., Atlanta, Georgia at 1:30 p.m. on Thursday, November 30, 2017.

Your rights may be affected by the court's ruling on this pleading. You should read the motion carefully and discuss it with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the court to grant the relief sought in the motion or if you want the Court to consider your views, then you or your attorney must attend the hearing.

You may also file a written response to the motion with the Clerk of the Bankruptcy Court, but you are not required to do so. Mail or deliver your response so that it is received by the Clerk at least two business days before the hearing. The address of the Clerk's office is Clerk, United States Bankruptcy Court, Suite 1340, Richard Russell Building, 75 Ted Turner Drive, SW, Atlanta, Georgia 30303. If you file a written response, you must attach a certificate stating when, how, and on whom (including addresses) you served the response. You must mail a copy of your response to the Office of the United States Trustee at Suite 362, Richard Russell Building, 75 Ted Turner Drive, S.W., Atlanta, Georgia 30303.

Date: November 1, 2017

Prepared and Served by:

/s/ **Thomas W. Dworschak**

Thomas W. Dworschak, Trial Attorney
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CERTIFICATE OF SERVICE

I hereby certify on November 1, 2017, I caused a copy of the attached Notice of Hearing and the United States Trustee's Motion to Dismiss or Convert to be sent by first class United States mail, properly addressed and with correct postage to the following:

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